

**Before The**  
**Local Boundary Commission**  
**Alaska Department of Community**  
**and Economic Development**

In the Matter of the Proposed  
Incorporation of Naukati as a Second  
Class City in the Unorganized Borough

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**Respondent's Brief in Opposition**  
**to the Proposed Incorporation of Naukati**  
**as a Second Class City in the Unorganized Borough**

Prepared for and on behalf of  
Scott Van Valin  
by  
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July 15, 2004

Pursuant to 3 AAC 110.480, Scott Van Valin, by and through his attorney, H. Clay Keene of Keene & Currall, and consultant, James A. Van Altvorst of Van Altvorst & Associates, files the following Respondent's Brief in opposition to the proposed incorporation of Naukati as a second class city in the unorganized borough:

## **INTRODUCTION**

By letter dated April 16, 2004, Gene Kane, Director of Community Advocacy, Alaska Department of Community and Economic Development, advised the community of Naukati that the State had accepted the Petition for Incorporation of Naukati as a Second-Class City within the Unorganized Borough. That notice initiated the formal Alaska Local Boundary Commission (LBC) process to review that petition. This process could lead to a public vote and eventual incorporation of the City of Naukati.

El Capitan Lodge, owned and operated by Scott Van Valin, is included within the proposed municipality's boundary. Therefore, Mr. Van Valin is an interested party in the proceedings related to the subject Naukati petition and hereby offers this response to that petition. Respondent Van Valin opposes this petition for two basic reasons.

First, respondent opposes the petition, because as drafted, it does not adequately demonstrate that the community now meets critical standards for incorporation of cities in the State of Alaska and that it is therefore ready to assume the full duties and responsibilities of city government. It is reasonable to believe that the Naukati area could benefit from local government services. Naukati West Incorporated's *Community Action Plan* (April 1998) offers considerable discussion that could support the notion that forming a city government would likely be a good community economic development strategy. Specifically, the *Plan* notes (page 10) that "Governmental infrastructure is needed if Naukati West is to remain a viable community." The *Plan* offers reasonable supporting detail in this regard.

However, the important question at this point is not whether Naukati may “need” city government. Rather, the question that calls for an answer is whether Naukati has reached a point in its development that would allow it to organize and maintain a viable local government over the long term. In this regard, respondent believes the petition calling for the incorporation of the Naukati community as a new second class city seems premature as the petition fails to adequately meet key standards for incorporation. Specifically,

- Respondent believes Naukati does not yet meet the standard set forth in 3 AAC 110.005 and 3 AAC 110.920, which provide that the area proposed for incorporation must encompass a community. Naukati is still a relatively new and as of yet under-developed community. It lacks sufficient density, a well-defined and well-established business community, and other factors typical of a distinct social unit and of a community ready to assume the duties and responsibilities of a new city government.
- Respondent believes Naukati does not yet meet the standard set forth in 3 AAC 110.020 that, “in accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.” In this regard, respondent notes as follows:
  - Naukati does not yet evidence the characteristics of a community that has reached a level of maturity sufficient to support a local government. The apparent lack of a well-established business community is particularly telling.
  - The rather peculiar structure of the “package bed tax” raises serious equity and legal questions. This is particularly troubling since the proposed operating budget does not appear to require the revenue generated by this tax.

Second, respondent opposes the petition, because it includes territory, specifically US Forest Service lands and the Sarkar settlement, that far exceeds Naukati's present or reasonably foreseeable community needs. Importantly, this feature of the petition appears to be focused primarily on securing a potential source of revenue without appropriate regard to providing a reasonable balance of benefits. The Sarkar settlement shares no commonality or community of interest with Naukati. Thus, the petition to combine these areas within a single boundary is simply a pretext to impose a tax burden beyond the Naukati community.

## **APPLYING THE STANDARDS FOR INCORPORATION TO NAUKATI PETITION**

### **Standard Regarding Existence Of A Community**

#### **Geographic Proximity of Residents**

The relatively low density of the Naukati community suggests that Naukati does not yet meet the standards set forth in 3 AAC 110.920 (a)(2).<sup>1</sup> This is particularly true when considered in light of other community characteristics.

The subject petition, as drafted, proposes a land area (exclusive of water areas) of 34.18 square miles for the City of Naukati, if incorporated. The Federal 2000 census claims a Naukati population of 135.<sup>2</sup> Therefore, the population density of the proposed City of Naukati would be only 3.95 people per square mile. According to the Local Boundary Commission staff's report on the Gustavus petition,

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<sup>1</sup> 3 AAC 110.920 (a)(2):

*(2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living ...*

<sup>2</sup> The petitioners claim Naukati's current population is 145 based on a "house by house head count," which they conducted on December 7, 2003. However, according to Alaska Division of Community Advocacy *Community Database Online* ([www.dced.state.ak.us/dca/commmdb/CF\\_BLOCK.cfm](http://www.dced.state.ak.us/dca/commmdb/CF_BLOCK.cfm)) the State Demographer estimates Naukati's 2003 population to be 109. Thus, depending upon which estimate is used, population density could range from a high of 4.24 people per square mile to a low of 3.19 people per square mile.

Existing cities in Alaska have population densities ranging from a high of 2,307 people per square mile of land (City of Ketchikan) to a low of 0.8 residents per square mile of land (City of Platinum). ... The average population density of all 145 cities in Alaska is 53.1 residents per square mile of land; the median figure is 46.5 persons per square mile.<sup>3</sup>

The City of Naukati, as proposed, would obviously be at the low end of the range. This is a simple result of a small population occupying a relatively large land area.

Naukati's interest in including the Sarkar area in its petition<sup>4</sup> is certainly one reason for this. Based only on a visual inspection, the area proposed for incorporation is roughly twice the area envisioned for community or settlement purposes in the Alaska Department of Natural Resources *Prince of Wales Island Area Plan*.<sup>5</sup> Reducing the land area proposed for the new city to approximate the community envisioned in that *Plan* would, of course, result in two important outcomes:

First, the population density would double to approximately 7.9 persons per square mile. While that would still be relatively low compared to other Alaska cities, it would represent a somewhat more reasonable density more reflective of a community meeting the standard for incorporating a city wherein "inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living."<sup>6</sup>

Second, reducing the boundaries could improve the viability of the new city government. The cost of delivering many local government services is directly related to the area in which the service is provided. Therefore, reducing the area in which

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<sup>3</sup> ADC&ED, *Preliminary Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus*, August 2003, page 43.

<sup>4</sup> The Sarkar area is not mentioned or otherwise included in Naukati's *Community Action Plan*, prepared for and approved by Naukati West Incorporated in April 1998. Sarkar-area property owners did not participate in the preparation of the *Plan*. This suggests that Naukati residents did not consider Sarkar part of their community at that time and that their interest in including the Sarkar area as part of an incorporated City of Naukati is relatively recent. A copy of the *Community Action Plan* is attached hereto and made a part of this brief as Appendix A.

<sup>5</sup> ADNR, *Prince of Wales Island Area Plan*, December 1988, pp 109-136, and ADNR, *Prince of Wales Island Area Plan – Proposed Revisions*, March 1998, pp 36-46.

<sup>6</sup> 3 AAC 110.920 (a)(2)

Naukati would be responsible for providing municipal services to the maximum extent possible while remaining consistent with the requirements of 3 AAC110.040(b) and (d) could prove to be beneficial to the new city if incorporation is ultimately successful.<sup>7</sup>

### **Inhabitants are a Discrete Social Unit**

The number and tenure of the local businesses located in Naukati also raise serious doubt as to whether Naukati has yet developed to the point that it has become a “discrete social unit” and therefore whether Naukati now satisfies the standard set forth in 3 AAC 110.920 (a)(3).<sup>8</sup> Several points can be made in this regard.

Under the heading “Method for Estimating Revenues from Over-night Stays and Vacation Packages” the Naukati petition identifies “four cabin/bunkhouse businesses who have been in business for over three years.”<sup>9</sup> Interestingly, only two of those businesses, Naukati Cabins and Naukati Adventures, are actually listed in the Alaska Division of Occupational Licensing’s on-line database of business licenses. The other two businesses are not listed in that database. Further, one of the listed businesses, Naukati Adventures, is actually listed as a “ship and boat building” business, not as a business providing “cabin rental and RV Park (10 spaces).”<sup>10</sup>

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<sup>7</sup> See also discussion at Standard Regarding Boundaries of a Community herein. Further, discussion at Standard Regarding Resources herein demonstrates that, based upon the petition as drafted, the proposed City of Naukati would not be dependent upon the “package bed tax” revenue it projects from property located in the Sarkar area for the municipal functions that the petitioners envision. Therefore, loss of territory would not adversely affect the proposed local government. Further, appropriate solutions to the equity and legal questions surrounding the proposed tax would mitigate that loss.

<sup>8</sup> 3 AAC 110.920 (a)(3)

*(3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.*

<sup>9</sup> Petition for Incorporation of 2nd Class City, page 5.

<sup>10</sup> ADC&ED, *Division of Occupational Licensing Database*. ([www.dced.state.ak.us/occ/search1.htm](http://www.dced.state.ak.us/occ/search1.htm)), June 6, 2004.

Further, a quick survey of the State's readily-available business license database (78,359 records)<sup>11</sup> suggests rather clearly that Naukati's business community, while it appears to be growing, is not yet well-developed, mature or stable. When queried for records reflecting Naukati addresses the State's business license database shows the following:

- During the period 1992 – 2005 (year-of-expiry), an average of only 4.57 individuals representing an average of only 3.29 businesses were active in Naukati on any given year during that 14-year period.
- During the period 2000 – 2005 (year-of-expiry), an average of only 6.67 individuals representing an average of only 4.83 businesses were active in Naukati on any given year during that period.
- Finally, during 2004 and 2005 (year-of-expiry) there are 22 business licenses representing 16 individual businesses in Naukati.

While at first blush the State database suggests notable growth in business activity in Naukati, particularly during the more recent years, further analysis suggests that this apparent increase in activity cannot reasonably be interpreted as growing depth or stability in the local business community. Interestingly and very importantly, the State's business license database shows that during the entire 14-year period (1992 through 2005) covered by the State's database only two businesses with Naukati addresses were active for more than one business license cycle (two years). Specifically, that database shows that

- Only one business license (the same business name) was renewed by the same individuals,<sup>12</sup> and

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<sup>11</sup> See Appendix B, Naukati Business License Data, for details.

<sup>12</sup> Actually the reported names show minor changes, e.g., a full first name instead of a shortened version, etc.

- Only one business license (the same business name) was renewed but by a different person.<sup>13</sup>

Therefore, available data clearly suggests that, while Naukati is gradually developing a local business community, it has not, by any stretch of imagination, yet achieved reasonable depth, stability or maturity. This raises two significant questions: (1) Does the community have the resources at this point to support a viable city government? (2) Can one reasonably view Naukati as a “discrete social unit?” A fair answer to both questions at this juncture would be “no.”

Other Naukati-specific documentation supports these conclusions. Specifically, the relatively recent (1998) *Community Action Plan*, prepared for and approved by Naukati West Incorporated, offers the following assessment of the local business community.

As a community, Naukati West is too young to have what can be properly called a traditional economy.<sup>14</sup>

That *Plan* also notes

The community [of Naukati] exists because of a decision by the State of Alaska to sell residential lots.<sup>15</sup>

Finally, the *Plan* adds that,

While the Naukati logging camp originated as an answer to an industrial need, like many Alaska communities Naukati West did not originate because of some economic need or advantage.<sup>16</sup>

Looking beyond Naukati helps gain important perspective on this point. The recently approved Gustavus petition shows

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<sup>13</sup> Presumably, this reflects a transfer of ownership of a business.

<sup>14</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 4.

<sup>15</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 4.

<sup>16</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 7.



currently 157 active business licenses in Gustavus ... [and a] substantial number of local employment sources ... [which include] the National Park Service, school district, post office, 14 lodges and bed & breakfasts (B&Bs), 18 charter businesses, 10 service oriented businesses, 9 professional services, 6 contractors, 3 retail stores, 2 construction contractors, and 5 transport businesses.<sup>17</sup>

Neighboring Prince of Wales Island communities, all second class cities, offer further perspective. For example, Coffman Cove presently shows 45 business licenses representing 38 individual businesses. Kasaan shows 10 business licenses that represent 8 individual businesses. Thorne Bay shows 140 business licenses representing 105 individual businesses.<sup>18</sup> In comparison, the current Naukati business community appears underdeveloped. It does not appear sufficiently robust to provide the resources reasonably necessary to support a viable local government. While the community may well overcome this deficiency in time, the Local Boundary Commission must give careful consideration to this point as it evaluates the subject petition. With declining federal and state grants and shared revenues, it is increasingly important that communities be demonstrably capable of generating and collecting sufficient revenues to meet local service and facility needs. Available data regarding Naukati does not support such a conclusion at this time.

## Summary

Accordingly, the respondent asserts that Naukati does not yet meet the standard set forth in 3 AAC 110.005 and 3 AAC 110.920. The area proposed for incorporation does not yet encompass a community. Naukati is still a relatively new and as of yet under-developed community. It lacks sufficient density, a well-defined and well-established business community, and other factors typical of a distinct social unit and

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<sup>17</sup> ADC&ED, *Preliminary Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus*, August 2003, page 44.

<sup>18</sup> ADC&ED, Division of Occupational Licensing Database. <http://www.dced.state.ak.us/occ/search1.htm>. See Appendix C for a table detailing these statistics.

of a community ready to assume the duties and responsibilities of a new city government.

## **Standard Regarding Boundary**

### **Geographic and Demographic Separation**

The boundaries as proposed for incorporation exceed the needs of the proposed city of Naukati. The petition does not provide the Commission with sufficient information to find that the conditions of AS 29.05.011<sup>19</sup> and 3 AAC 110.040(b) and (d) have been met.

As discussed below, the community of Naukati is separated by approximately three miles of National Forest<sup>20</sup> from the settlement of Sarkar.<sup>21</sup> The citizens of

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<sup>19</sup> AS 29.05.011 states:

Sec. 29.05.011. Incorporation of a city. (a) A community that meets the following standards may incorporate as a first class or home rule city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an effective scale;
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) there is demonstrated need for city government.

(b) A community that meets all the standards under 9a) of this section except (a)(1) may incorporate as a second class city.

<sup>20</sup> Petition for Incorporation of 2<sup>nd</sup> Class City, page 23, Petitioner states:

The proposed area of incorporation is all of the State Land in and around Naukati...

Naukati and the part-time residents of Sarkar are further distanced by their distinctly different lifestyles and demographics. The residents of Sarkar number less than twelve part-time residents,<sup>22</sup> who reside only during the summer at Sarkar.<sup>23</sup> The absence of association and dependence between these populations precludes the appearance or fact of community. The settlement of Sarkar has little in common with the people or community of Naukati. This alone questions the propriety of making the Sarkar area part of the proposed city of Naukati.

### **Naukati and Sarkar Are Not a Single Homogenous Community**

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This statement ignores the presence of National Forest land extending through the proposed boundary area, and situated directly between the community of Naukati West and the Sarkar Subdivision. The settlement of Naukati is not contiguous to the “State Land” that comprises the Naukati community. This is most evident from the US Forest Service *Prince of Wales Island Road Guide* map which is attached as Appendix D, and which identifies federal National Forest land situated between the Naukati community and the Sarkar settlement. As the crow flies, approximately three miles of federal land separate Naukati and Sarkar. However, it takes 35-40 minutes under good conditions to drive the eight miles from the waterfront parcels at Sarkar to the community of Naukati. The road system is limited and includes more than a mile of private, single lane access through the subdivision, and continues as a single lane dirt road for an additional mile and a quarter until it connects with Highway 20 that continues the remaining six miles to Naukati. Extending either water or sewer services from Naukati to Sarkar along this road system, or directly across federal land, would be neither feasible, nor practical. Boat travel between the waterfront parcels at Sarkar and Naukati is practical, weather permitting. A boat trip to Naukati from Sarkar takes about twenty-five minutes.

<sup>21</sup> The petition does not describe the citizens or property that comprise the Sarkar settlement. The 300 acres of private land within the Sarkar Subdivision are surrounded on all sides entirely by water and National Forest, and do not otherwise adjoin the community of Naukati. Consequently, there is no opportunity for expanding the Sarkar settlement beyond the boundaries of the subdivision. The development of the subdivision has been painstakingly slow since Ruth Ann Albright, of Craig, Alaska, and Lee Falk, of Tacoma, Washington, developed it in the 1990’s. There are ten waterfront parcels and 30 upland parcels within the subdivision. There are presently only seven single-family homes and the El Capitan Lodge within the subdivision. Of the 30 upland parcels only two have been sold and neither is developed. Of the ten waterfront parcels, one remains undeveloped. Accordingly, the part-time residents of the Sarkar Subdivision do not comprise a “community,” either amongst themselves or in combination with Naukati residents, as that term is defined in 3 AAC 110.920(1),(2) and (3).

<sup>22</sup> See, 3 AAC 110.920(a)(1):

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

(1) settlement is inhabited by at least 25 individuals;

<sup>23</sup> See, 3 AAC 110.920(a)(2):

(2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living;

The residents of Naukati are, for the most part, remnants of what was a logging community. They have survived the disappearance of a timber economy on ingenuity and a quasi-subsistence life style.<sup>24</sup> This is distinctly different from the life style and culture of the part-time residents of Sarkar. The residents of Sarkar come to Alaska seasonally.<sup>25</sup> They are middle-aged or older, and retired. These people come to Alaska to fish and recreate during the summer. Most leave in the fall. There are no residents within the Subdivision's properties during the winter, except for the watchman at the El Capitan Lodge.

The people that own property in the Sarkar Subdivision value their privacy. The only road access through the Subdivision is gated and locked. More than three miles of federal land and eight miles of road separate the Subdivision from Naukati. There is no "discrete and identifiable social unit" common to the residents of the Subdivision other than their ownership of land.<sup>26</sup> They have no children who are attending school that would bring them in contact with the citizens of Naukati. None have businesses or commercial enterprises that would draw the citizens from Naukati to the Sarkar settlement. The only business within the Subdivision is the El Capitan Lodge. That business does not employ residents

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<sup>24</sup> Community Action Plan, Naukati West Incorporated, April 1998, pages 7, 8, and 10, attached hereto and made a part of this brief as Appendix A.

<sup>25</sup> Of the seven Sarkar landowners identified, one resides in Phoenix, Arizona, one in Santa Rosa, California, one in Kona, Hawaii, and one in Carlsborg, Washington. The other residents identified have Craig, Alaska addresses, and like the out-of-state residents, do not reside "permanently" at their Sarkar property. Many of these out-of-state residents cannot vote in Alaska. Not identified on page 15 of the petition as a subdivision resident, is Lee Falk, who resides in Tacoma, Washington, and was the co-developer of the subdivision with Ruth Ann Albright.

<sup>26</sup> See, AAC 110.920(a)(3):

(3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as

indicated by such factors as school enrollment, number of sources of employment, voter

registration, precinct boundaries, permanency of dwelling units, and the number of

commercial establishments and other service centers.

from the Subdivision or from Naukati. The Lodge has virtually no business relationship with Naukati, and no other needs that are presently being met by persons or businesses from the Naukati community. Similarly, few within the Sarkar settlement do business in Naukati other than the infrequent purchase of gas or convenient store type purchases.

The Sarkar property owners have not solicited or asked for services from the community of Naukati.<sup>27</sup> They have interests and needs distinctly different from those of the residents of Naukati. Petitioner has not, nor is it practical, for Petitioner to identify a common thread that joins the citizens of Naukati with the residents of Sarkar as a single community. Adopting the proposed boundaries will do nothing to change the separateness and distinctions that set these areas and their people apart.

Absent from the petition<sup>28</sup> is discussion that satisfies 3 AAC 110.040(b).<sup>29</sup> The residents of Sarkar are not now, nor have they been, part of the Naukati

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<sup>27</sup> Petition for Incorporation of a Second Class City, page 25:

With this growth in the Sarkar subdivision Naukati feels that it is only a matter of time until Sarkar residents will want services providing quality of life and emergency response.

The Petitioner has assumed the people of Sarkar want the services offered in the petition. There is no evidence before the Commission that the seven part-time residents want to be made part of the community of Naukati, or want the services offered by Petitioner. These people are at a distinct disadvantage. They are few in number, and most do not qualify to vote in Alaska. They have little or nothing in common with the community of Naukati and those asked have told Petitioner that they do not want to be made part of the Naukati community. The clear motive for making Sarkar part of the city of Naukati, is not to join two homogenous communities, but for the community of Naukati to capture tax revenue beyond its borders. The Commission should consider this carefully. Caution needs to be taken. The Commission must consider whether the community of Naukati is sufficiently mature to assume the obligations of incorporation. The fact Naukati looks beyond itself for tax revenue from a distant settlement having no connection or relationship to Naukati should raise the concern that Naukati is not ready for incorporation.

<sup>28</sup> Petition for Incorporation of a Second Class City, pages 23-45.

<sup>29</sup> 3 AAC 110.040(b):

community. They are not socially, religiously, or emotionally linked to the community of Naukati. The residents of Sarkar have never shown a desire or need to be part of the Naukati community. Similarly, Naukati has never demonstrated a need or desire to make the residents of Sarkar part of the Naukati community.

The petition provides no facts upon which the Commission can find that the presumption of 3 AAC 110.040(d) is rebutted in favor of the Petitioner. The Sarkar settlement is not contiguous to the community of Naukati because of three miles of National Forest that separates them. Accordingly, the Petitioner has the burden, under 3 AAC 110.040(b), to give persuasive justification for making Sarkar part of the city of Naukati.<sup>30</sup> This burden requires the Petitioner to explain in clear, concise and persuasive language why, in the face of the noncontiguous status of these areas, it is necessary to include the Sarkar settlement into the boundaries of the city of Naukati. This, the Petitioner has failed to do.

## Summary

The petition is without discussion, much less persuasive reasoning, (1) why the distant settlement of Sarkar, with its distinctly different population, should be included into the boundaries of the proposed city, or, (2) what essential needs, services or resources are obtainable only from the Sarkar settlement that make necessary the addition of the Sarkar settlement to the proposed city of Naukati. In the absence of such a showing by Petitioner, the Commission must find that the Sarkar settlement, and its people, are not necessary to the needs of the city of

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(b) The boundaries of the proposed city must include only that territory **comprising a present local community**, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation. (Emphasis added)

<sup>30</sup> 3 AAC 110.040(d):

Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential city services on an efficient, cost-effective level.

Naukati. Such a finding requires that the Sarkar settlement be excluded from the boundaries of the city of Naukati.

## **Standard Regarding Resources**

### **Reasonably Anticipated Expenses of Proposed City**

To facilitate review of the proposed budget, respondent reorganized the proposed revenues and expenses along functional lines. Respondent's reorganized budget is attached hereto as Appendix E. The reorganized draft shows the following points of concern regarding the budgets the petitioners propose for the new City of Naukati:

- Petitioners propose a significant, perhaps unreasonable, reserve fund. Specifically, the petitioners project municipal reserves of 21 percent, 54 percent, and 46 percent for budget years 1, 2 and 3 respectively. The projected reserves average 41 percent over the first three years of municipal operation. This appears excessive, even in light of the uncertainties attending the establishment of a new municipality. This is especially true since the petition does not express a purpose for such a large reserve fund.
- Petitioners propose a significant share (45 %) of the total municipal expenditures for administrative functions only indirectly related to provision of actual services, such as public safety or public works services, to the general public. See chart attached hereto as Appendix F. Although respondent recognizes the importance of administrative functions in any organization, the apparent emphasis on administration in the subject petition for incorporation of Naukati raises a question as to whether or the degree to which there is, in fact, a need for city government as required by the standards for incorporation.<sup>31</sup>

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<sup>31</sup> 3 AAC 110.010(a) provides that "In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government."

- Municipal enterprises comprise nearly one quarter (24%) of the proposed city's expenditures.<sup>32</sup> See chart attached hereto as Appendix F. The shellfish nursery represents the lions' share (68%) of projected enterprise expenditures.<sup>33</sup> Although such a shellfish nursery is arguably an appropriate municipal function in concept as it should support local economic development, its inclusion in the Naukati municipal organization and budget seems problematic. Respondent understands that, in this case, the shellfish nursery site lease and the permits for operation are already in place as a result of the efforts of various local individuals and a not-for-profit organization. Therefore, interjection of the municipality into the selfish nursery operation seems wholly unnecessary – the community already enjoys, or will soon enjoy, the benefits of the shellfish nursery enterprise. Again, this raises the question as to whether there is a need sufficient to meet the test of AS 29.05.011 and 3 AAC 110.010(a) for city government at Naukati.<sup>34</sup>
- Petitioners do not propose a balanced budget. The budget shows a constant deficit of \$5,000. This is not a significant amount; it is easily managed given the estimated reserves. Nonetheless it seems worthy of note.
- Petitioners do not make any provision for legal services in the proposed budget in spite of the fact that the petition includes numerous issues, which are fraught with legal complexities. City council actions to establish the foundations of the City of Naukati would benefit from attorney consultation and oversight. The initial steps are critically important; the benefits of timely advice would easily outweigh the costs. In this regard, respondent notes the following:

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<sup>32</sup> Calculation: Total Municipal Enterprise Expenditures of \$37,250 divided by Total Municipal Operating Expenses of \$153,750 equals 24 percent.

<sup>33</sup> Calculation: Total Shellfish Nursery Expenditures of \$25,350 divided by Total Municipal Enterprise Expenditures of \$37,250 equals 68 percent.

<sup>34</sup> 3 AAC 110.010(a) provides that "In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government."



- The initial organization of the municipality will require various ordinances, resolutions and other policy documents. Ordinances in particular, which carry the force of law, are not to be taken lightly. Those ordinances and resolutions that form the foundation for the City of Naukati and its operations would clearly benefit from legal review and consultation.
- The rather peculiar structure of the “package bed tax” that the petitioners propose raises serious equity and legal questions. The City of Naukati would clearly benefit from legal consultation as it attempts to draft the sales tax ordinance as proposed in the petition, including development of appropriate legally defensible definitions for the class or classes of goods and services to be taxed, and creation of the necessary enforcement mechanisms.
- The petition proposes transfer of certain assets (and liabilities) from various not-for-profit organizations. This is not necessarily a simple undertaking. The new city would benefit from the services of an attorney for satisfactory completion.
- Similarly, the mechanics of transferring the shellfish nursery enterprise to the municipality is likely to be a fairly complex project. The petition does not spell out the process for the city to assume the privately-held shellfish nursery site lease and operating permit to City. For example, respondent understands and believes that, while the site lease could be held by a municipal corporation, a shellfish nursery operating permit must be held by an individual. How will the proposed city accomplish these tasks? Respondent believes the process will likely require the services of an attorney for satisfactory completion.

- The proposed budget does not analyze the effect of program restrictions (road maintenance and special projects) affecting National Forest Receipts payments on expenditures.

### **Ability of Proposed City to Generate and Collect Local Revenue, and the Reasonably Anticipated Income of the Proposed City**

The Naukati petition raises four points of significant concern with regard to the “ability of proposed city to generate and collect local revenue, and the reasonably anticipated income of the proposed city.” Those points follow.

- Grants and shared revenues are generally declining. In its relatively recent review of the Gustavus petition, LBC staff noted several such sources of revenue that are declining.<sup>35</sup> The Naukati West Incorporated *Community Action Plan* also discusses this general concern,<sup>36</sup> suggesting that incorporation could be one possible way for the community to respond to such problems.<sup>37</sup> However Naukati, unlike Gustavus, would not have substantial resources readily available as it wrestles with gradually declining federal- and state-shared revenues. Naukati’s economic base appears weak and generally under-developed. Further, judging from the tone of the petition and the *Community Action Plan*,<sup>38</sup> the community seems less tolerant of broad-based sales or property taxes. This could seriously constrain the municipality’s ability to perform necessary services or provide essential or desired facilities. In the extreme, this could jeopardize the viability of the city.

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<sup>35</sup> ADC&ED, *Preliminary Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus*, August 2003, page 62-64.

<sup>36</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 9.

<sup>37</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 10-11.

<sup>38</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 10: In spite of the general recognition that “governmental infrastructure is needed if Naukati West is to remain a viable community,” “There is currently little apparent desire among Naukati West residents to become a second class municipality.”

- As discussed elsewhere in this brief, the Naukati's economic base appears generally weak and under-developed. This raises serious question as to the "ability of the proposed city to generate and collect local revenue."
- Respondent believes the rather peculiar structure of the package bed tax, as proposed, raises serious equity and legal questions. Appropriate resolution of those concerns could result in a significant impact on estimated income from this source. However, in this regard, respondent notes that the proposed operating budget does not appear to actually require the revenue generated by the bed tax – accepting a lower reserve fund, e.g., 20 percent instead of 40 percent, would adjust for possible losses in bed tax revenue.
- Respondent asserts that the proposed boundaries for the City of Naukati encompass territory not justified under the standards for incorporation. If the Commission redraws the boundary of the proposed municipality to address that problem, the reduced area would likely exclude the major source (El Capitan Lodge) of the package bed tax proposed in the petition. Again, in this regard, respondent notes that the proposed operating budget does not appear to require the revenue generated by the tax. A simple adjustment – accepting a lower reserve fund, e.g., 20 percent instead of 40 percent, would correct for the possible loss in bed tax revenue. Therefore, loss of territory should not adversely affect the proposed local government. Further, appropriate solutions to the equity and legal questions surrounding the proposed tax could also mitigate that loss.

### **Feasibility and Plausibility of the anticipated Operating and Capital Budgets Through Third Full Fiscal Year of Operation**

Petitioners estimated an approximate 60 percent increase in shellfish production and sales beginning with the second year of operation.<sup>39</sup> However, petitioners did not carry related increases in expense and income into the proposed municipal budgets for the

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<sup>39</sup> Petition for Incorporation of 2nd Class City, page 5.

second and third years following incorporation. To address this oversight and to facilitate review of the longer-term implications of the proposed budget, respondent attempted to make and include those estimates in a draft of a revised Naukati budget. Respondent's calculations regarding the proposed shellfish enterprise and the resultant revised budget are attached hereto as Appendix G and Appendix H respectively. This review and budget analysis merely reinforces respondent's concern, expressed above, regarding the level of municipal reserves carried in the proposed budget without apparent purpose.

### **Economic Base of the Proposed City**

A review of Naukati West Incorporated *Community Action Plan* (April 1998), of ADNR's *Prince of Wales Island Area Plan* (1988 and 1998 editions), and of historic and current community business license data suggest quite clearly that Naukati is a very young community and that, therefore, the community, though developing, still lacks a well-developed economic base sufficient to sustain city-level government.

ADNR's *Prince of Wales Island Area Plan* offers interesting perspective. The December 1988 edition notes simply that "Naukati has been the site of a log transfer facility and logging camp for many years." It also notes that "Naukati is expected to develop into a permanent community after state land disposal because it is the primary access point to the Sea Otter Sound from Prince of Wales Island, it is strategically located related to the island road system, and the area has desirable settlement values."<sup>40</sup> (Emphasis added.)

However, by 1998 the revised edition of the *Prince of Wales Island Area Plan* offered a slightly upgraded projection regarding the prospects of Naukati one day becoming a permanent community. The 1998 edition no longer mentions the log transfer facility or the logging camp. Further, by deleting the phrase "after state land disposal," it suggests that the State land disposal, anticipated in 1988, was then completed. This

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<sup>40</sup> ADNR, *Prince of Wales Island Area Plan*, December 1988, p. 123.

argues that, at least from ADNR's perspective, Naukati was by then able to begin the initial steps in the often long journey to becoming a full-fledged community capable of supporting city government.

Naukati West Incorporated *Community Action Plan* further reveals the newness of Naukati. The plan notes that, at that time (April 1998),

Naukati is trying to find a replacement economy as timber harvests from the Tongass National Forest continue to diminish and harvests from other ownerships are unable to take up the slack ...

The *Plan* discussed at some length the opportunities for Naukati to develop a diversified and stable local economy. The *Plan* also discussed the limitations and challenges the community would face as it embarked on the road to becoming a full-fledged community. Not insignificantly, the *Plan* notes that Naukati "lacks any clear economic advantage."

Perhaps one of the more distinguishing characteristics of Naukati West is that it is not an old enough community to have experienced a major economic loss. While the Naukati logging camp originated as an answer to an industrial need, like many Alaska communities Naukati West did not originate because of some economic need or advantage. However, many residents have a long history of working in the forest industry throughout Southeast and diminishing timber production therefore has significant implications for the community (as does the lack of any clear economic advantage).<sup>41</sup>

That is not to say that Naukati is without hope. The *Plan* identifies a number of area features and resources that could, with time and investment, form a reasonable basis

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<sup>41</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 7.

for a stable and diversified local economy. The *Plan* is an “Action Plan.” It identifies specific projects and sets out a basic plan to move forward.

However, historic and current community business license data (discussed at Standard Regarding Existence of a Community herein) establish the fact that Naukati’s journey to becoming a full-fledged community has just begun. It has not yet arrived. Accordingly, respondent asserts that Naukati does not yet have an economic base adequately developed to sustain city government.

### **Existing and Reasonably Anticipated Industrial, Commercial, and Resource Development for the Proposed City**

As discussed above and at Standard Regarding Existence of a Community herein, respondent asserts that the Naukati West Incorporated *Community Action Plan* (April 1998) and historic and current business license data demonstrate that Naukati does not yet meet this standard. Respondent asserts that “existing and reasonably anticipated industrial, commercial, and resource development” are presently insufficient to sustain the proposed city.

### **Personal Income of Residents of the Proposed City**

Respondent notes that, with regard to income and related data, Naukati presently appears somewhat less able to support city government than other Prince of Wales Island communities. Income and employment statistics from 2000 census data are particularly telling in this regard.

For example, per capita income for Naukati, Coffman Cove, Kasaan and Thorne Bay averages \$19,945. Naukati per capita income of \$15,949 is only 80 percent of the average. Similarly, median family income for Naukati, Coffman Cove, Kasaan and Thorne Bay averages \$41,788. Naukati median family income of \$32,917 is 79 percent of the average. Note Appendix I(1), Population Characteristics, attached hereto, for details.

Employment statistics for persons 16 years or older paints a similar picture. Average level of employment in that age category Among the Prince of Wales communities of Naukati, Coffman Cove, Kasaan and Thorne Bay the average level of employment is 53 percent. Naukati, at 40 percent, falls 25 percent below the average.

Accordingly, respondent urges the Commission to assess carefully Naukati's ability to sustain city government at this time.

### **Need for and Availability of Employable Skilled and Unskilled Persons to Serve the Proposed City**

As discussed above and at Standard for Existence of a Community herein, respondent asserts that the Naukati West Incorporated *Community Action Plan* (April 1998) and historic and current business license data demonstrate that Naukati does not yet meet this standard. Accordingly, respondent urges the Commission to assess carefully whether Naukati has sufficient "employable skilled and unskilled persons to serve the proposed city."

### **Reasonably Predictable Level of Commitment and Interest of Residents in Sustaining a City**

Interest in forming a local government in the Naukati area appears to be a fairly recent phenomenon. The reasons are likely quite simple and obvious.

In part, it is likely a simple result of the fact that the relevant history of settlement in the Naukati area is quite short. The State of Alaska *Community Database Online* sums it up rather simply: "It was a [Ketchikan Pulp Company] logging camp at one time, but later settled as a Department of Natural Resources land disposal site."<sup>42</sup> This is consistent with discussions of the beginnings of the Naukati community provided in

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<sup>42</sup> Alaska Division of Community Advocacy, *Community Database Online*, [www.dced.state.ak.us/dca/commmdb/CF\\_BLOCK.cfm](http://www.dced.state.ak.us/dca/commmdb/CF_BLOCK.cfm)

the *Community Action Plan* <sup>43</sup> and with the background information relating to Naukati in the *Prince of Wales Island Area Plan*. <sup>44</sup>

Further, many people expressly choose to live in relatively remote locations like Naukati in order to limit to the extent possible the influence and impact of government on their day-to-day lives. Public community planning documents articulate such a general lack of interest in local government. Notably, the *Community Action Plan* prepared for and approved by Naukati West Incorporated noted as recently as 1998 that, in spite of the apparent fact that “government infrastructure is needed if Naukati West is to remain a viable community,” “there is currently little apparent desire among Naukati West residents to become a second class municipality.” <sup>45</sup>

Therefore, the subject petition appears to represent a relatively recent change of heart among at least some members of the community. In this regard, the Naukati petition stands in marked contrast with the long-term efforts of Gustavus residents to incorporate their community – it took nearly two and a half decades for Gustavus to achieve that milestone.

In this light, respondent urges the Commission to assess carefully the “level of commitment and interest that Naukati area residents hold with regard to sustaining a city government.”

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<sup>43</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, notes at page 4: “The community of Naukati] exists because of a decision by the State of Alaska to sell residential lots.”

<sup>44</sup> ADNR, *Prince of Wales Island Area Plan*, December 1988, pp 123-129, and ADNR, *Prince of Wales Island Area Plan – Proposed Revisions*, March 1998, pp 41-46. *Prince of Wales Island Area Plan*, December 1988, notes at page 123: “Naukati has been the site of a log transfer facility and logging camp for many years.” *Prince of Wales Island Area Plan – Proposed Revisions*, March 1998, notes at p 41: “Naukati is expected to develop into a permanent community [AFTER STATE LAND DISPOSAL] because it is the primary access point to the Sea Otter Sound from Prince of Wales Island, it is strategically located related to the island road system, and the area has desirable settlement values.”

<sup>45</sup> *Community Action Plan*, Naukati West Incorporated, April 1998, p. 10.



## Summary

Accordingly, the respondent asserts that Naukati does not meet the standard set forth in AS 29.05.011 and 3 AAC 110.020. Naukati is still a relatively new and as of yet under-developed community. The economy of a proposed city does not yet include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

## CONCLUSION

In summary, respondent El Capitan Lodge, LLC objects to and opposes the petition calling for the incorporation of Naukati as a second class city in the unorganized borough for the following reasons.

- Naukati does not yet meet the standard set forth in 3 AAC 110.005 and 3 AAC 110.920, which provide that the area proposed for incorporation must encompass a community. Naukati is still a relatively new and as of yet under-developed community. It lacks sufficient density, a well-defined and well-established business community, and other factors typical of a distinct social unit and of a community ready to assume the duties and responsibilities of a new city government.
- The proposed boundaries include territory, specifically US Forest Service lands and the Sarkar settlement, that far exceeds Naukati's present or reasonably foreseeable community needs. Therefore, the petition, as presented, does not meet the standard set forth in 3 AAC 110.040 (b) and (d).
- Naukati does not yet meet the standard set forth in 3 AAC 110.020 that, "in accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level." Naukati does not yet evidence the

characteristics of a community that has reached a level of maturity sufficient to support a local government. In this regard, the apparent lack of a well-established economic base is particularly telling.

Dated at Ketchikan, Alaska this 15th day of July 2004.

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Consultant

By   
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## **Appendices**

- A.     *Community Action Plan.* Naukati West Incorporated, April 1998
- B.     Alaska Business License Data -- Naukati
- C.     Alaska Business License Data -- Comparing Naukati with Other Prince of Wales Island Communities
- D.     Prince of Wales Island Road Guide
- E.     Budget as Proposed by Petitioner -- Reformatted Version
- F.     Percent Distribution of Proposed Expenditures - Budget Year 1
- G.     Shellfish Nursery Analysis
- H.     Revised Version (Incorporating Shellfish Nursery Operation Into Years Two and Three of Proposed City Budget)
- I.     Federal Census Data
  - I(1)    Population Characteristics
  - I(2)    Population History
  - I(3)    Residency and Housing Characteristics